on a spur by the platform, neither was it at any time attached or near to a locomotive. The cotton was burned. In an action on the policy, *held,* that the exception extended only to cotton in open cars "in transit," and that the plaintiff could recover. *Royal Insurance Co.* v. *Texas & G. Ry. Co.* (1909), — Tex. Civ. App. —, 115 S. W. 117.

The courts are thoroughly committed to the doctrine that the insurance contract in general, and particularly such provisions as limit the insurer's liability, will be so construed as to permit a recovery if possible. 1 COOLEY'S BRIEFS ON THE LAW OF INSURANCE, p. 633; *Liverpool and London and Globe Insurance Co.* v. *Kearney,* 180 U. S. 132. Examples of liberal constructions of "exceptions" are *Continental Insurance Co.* v. *Pruitt,* 65 Tex. 125, where a policy on a hotel and its contents, excepting "goods held on storage," was held to cover goods of the proprietor stored in the hotel, and *Hanover Fire Ins. Co.* v. *Mannasson,* 29 Mich. 316, where a policy excepting "plate" was held to cover silver forks, tea and table spoons on the theory that the term plate did not cover articles of ordinary use. In these two cases, however, there is some room for two constructions. The court in the principal case attempts to give the contract that construction which, while protecting the insurer against the increased hazard, preserves the general protection of the policy. It finds the intent of the parties to be to protect the insurer against the increased hazard due to transporting cotton in open cars. That protection was not sought against the hazards due to the cotton lying on open cars not in transit the court determines from the fact that the policy expressly covers cotton on platforms or on the ground. The intention of the parties, of course, governs. But where the parties have by clear and unambiguous language expressed that intention, the courts cannot, even in an insurance contract, make a new contract for them. *Maryland Casualty Co.* v. *Hudgins,* 97 Tex. 124, where the court recognized its "duty" to so construe the contract, if possible, as to make the insurer liable, lays down the rule just stated. In ordinary conversation or communication the phrase "cotton in open cars" seems perfectly clear and unambiguous; as an "exception" in a contract of insurance, however, its ambiguity is, in view of the predominant authorities, perfectly obvious. But is it not this unbecoming search for ambiguities which, as Vance (VANCE, INSURANCE, p. 280) says in another connection, "shakes the confidence of insurers, and even of some disinterested parties, in the English language, as understood in the courts of law?"

INSURANCE—RIGHT TO SUE ON INDEMNITY POLICY—PAYMENT OF LOSS BY RECEIVER'S NOTE.—The defendant was insured against loss sustained by reason of injuries to its employees resulting from defendant's negligence. The policy was in the usual form and contained the provision that "no action shall lie * * * unless brought by the assured himself to reimburse him for loss actually sustained and paid by him in satisfaction of a judgment," etc. The plaintiff recovered judgment against the defendant for personal injuries sustained while in its employ, but judgment was rendered too late to be proved in bankruptcy proceedings by which the defendant had been

adjudged a bankrupt, during the pendency of the suit. At the instance of the plaintiff the state court appointed a receiver of the defendant as an insolvent judgment debtor, and by proper proceedings this indemnity policy was assigned over to him. Thereupon the plaintiff compromised his claim with the receiver and the court made an ex parte order authorizing the receiver to issue his demand promissory note in satisfaction of the judgment, and to begin suit against the insurance company, which was done. On the motion of the defendant the ex parte order was vacated. The receiver appeals. *Held,* that the payment by the receiver's note was not such a payment of the claim as would fix the insurer's liability. *Stenbohm* v. *Brown-Corliss Engine Co. et al.* (1909), — Wis. —, 119 N. W. 308.

The court very properly saw in the ex parte proceedings "a mere subterfuge resorted to for the purpose of making a nominal compliance with the contract." In *Kennedy* v. *Fid. & Cas. Co.*, 100 Minn. 1, cited in the principal case, it was held that payment by a note given in good faith in actual settlement of the claim satisfied the requirement of actual payment. But there the court comments on the fact that the note given was good commercial paper. Indemnity insurance of this kind is in no sense made for the benefit of the injured employee, and he cannot sue the insurance company even after he has recovered judgment, the insured being hopelessly insolvent. *Beyer* v. *Int. Aluminum Co.*, 101 N. Y. S. 83. Neither can he when actual payment, as in the principal case, is necessary to fix the insurer's liability, charge the insurer as garnishee. *Allen* v. *Aetna Life Ins. Co.*, 145 Fed. 881. Had plaintiff's judgment been provable in the bankruptcy proceedings, such proceedings would have been a payment pro tanto of the claim and would have given the trustee a right of action against the insurer. *Traveller's Ins. Co.* v. *Moses*, 63 N. J. Eq. 260. In the *Kennedy* case, supra, the fact that the note was good commercial paper proves that the insurance money, while it would be available for the purpose, was not depended upon to meet the note, but it is peculiarly patent in the principal case that the receiver who had no assets in his possession but the indemnity policy, must necessarily look to the proceeds of the insurance to pay the note, and the case is, perhaps, only remarkable as an ingenious attempt to enlarge the doctrine of the *Kennedy* case. Under the latest forms of indemnity policies it would seem that the insured is bound to resist the claims of the injured employee, but whether, after judgment rendered, he is bound either legally or in good conscience to resist satisfaction has never been directly decided.

INTOXICATING LIQUORS—ILLEGAL SALE—ORDINANCE—VALIDITY.—Defendant, convicted in the police court of Wichita for maintaining a nuisance by keeping a place where intoxicating liquors were sold in violation of a city ordinance, enacted in pursuance of a state statute relating to cities, carried the case to the supreme court on the theory that the ordinance was void because there was lack of uniformity in the punishment prescribed for violators of the law. Defendant urged that as city jails are not uniform in quality, some being reasonably comfortable while others are so exposed to the weather or